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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/013,989	12/10/2001	Richard Everett Cole	AG/W-21739/P1/AC 438	7527

324 7590 07/14/2003

CIBA SPECIALTY CHEMICALS CORPORATION  
PATENT DEPARTMENT  
540 WHITE PLAINS RD  
P O BOX 2005  
TARRYTOWN, NY 10591-9005

EXAMINER

GANEY, STEVEN J

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 07/14/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/013,989

Applicant(s)

COLE ET AL.

Examiner

Steven J. Ganey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Reissue Applications***

1. The reissue oath/declaration filed with this application is defective because it fails to identify at least one error, which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414. The error reason statement provided needs to be elaborated upon and both the patented claim and the corrected claim language removed from the declaration.
2. The reissue oath/declaration filed with this application is defective because it fails to contain a statement that all errors, which are being corrected in the reissue application up to the time of filing of the oath/declaration, arose without any deceptive intention on the part of the applicant. See 37 CFR 1.175 and MPEP § 1414. The language used in the current “errors statement” is not proper and the above “all errors” statement above should be used.
3. The reissue oath/declaration filed with this application is defective because under 35 U.S.C. 117, if a legal representative of a deceased inventor signs on behalf of the inventor, the legal representative must state that the person is a legal representative and provide the full name, the citizenship, residence, and a mailing address of the legal representative. The current oath/declaration does not state that the person executing the oath/declaration is a “legal representative”, does not provide the full printed name of the legal representative and it is not clear if the address provided is that of the deceased or the legal representative. The information above should be provided in addition to the deceased’s name and address.
4. Claims 1-13 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

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The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

5. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

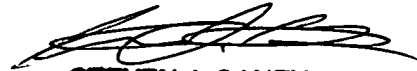
6. The amendment filed December 10, 2001 proposes amendments to claim 1 that do not comply with 37 CFR 1.173(b), which sets forth the manner of making amendments in reissue applications. A supplemental paper correctly amending the reissue application is required in the next response. Note any changes relative to the patent being reissued, which are made to the specification, including the claims, upon filing, or by an amendment paper in the reissue application, must include the following markings: (1) The matter to be omitted by reissue must be enclosed in brackets; and (2) The matter to be added by reissue must be underlined, except for amendments submitted on compact discs ( § § 1.96 and 1.821(c)).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is (703) 308-2585. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar, can be reached on (703) 308-2087. The fax phone number for this Group is (703) 308-7766.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.



**STEVEN J. GANEY**  
**PRIMARY EXAMINER**

*S/4/03*

sjg

5/4/03